

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Teresa Beaudet

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Consumer Advocacy Group, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES– CENTRAL DISTRICT

CONSUMER ADVOCACY GROUP, INC.,
in the public interest,

Plaintiff,

v.

GAJU MARKET CORPORATION DBA
CALIFORNIA MARKET, a California
Corporation;
and DOES 1-10.

Defendants.

CASE NO.

COMPLAINT FOR PENALTY AND
INJUNCTION

Violation of Proposition 65, the Safe
Drinking Water and Toxic Enforcement
Act of 1986 (*Health & Safety Code*, §
25249.5, *et seq.*)

ACTION IS AN UNLIMITED CIVIL
CASE (exceeds \$25,000)

Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
defendants GAJU MARKET CORPORATION DBA CALIFORNIA MARKET, and DOES 1-10
as follows:

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THE PARTIES

1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an organization qualified to do business in the State of California. CAG is a person within the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting as a private attorney general, brings this action in the public interest as defined under Health and Safety Code section 25249.7, subdivision (d).
2. Defendant GAJU MARKET CORPORATION DBA CALIFORNIA MARKET (“GAJU”) is a type of business entity here, qualified to do business and doing business in the State of California at all relevant times herein.
3. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-10, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and the damages caused thereby.
4. At all times mentioned herein, the term “Defendants” includes GAJU, and DOES 1-10.
5. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all times mentioned herein have conducted business within the State of California.
6. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-10, was an agent, servant, or employee of each of the other Defendants. In conducting the activities alleged in this Complaint, each of the Defendants was acting within the course and scope of this agency, service, or employment, and was acting with the consent, permission, and authorization of each of the other Defendants. All actions of each of the Defendants alleged in this Complaint were ratified and approved by every other Defendant or their officers or managing agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged wrongful conduct of each of the other Defendants.

1 7. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
2 Defendants was a person doing business within the meaning of Health and Safety Code
3 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
4 employees at all relevant times.

5 **JURISDICTION**

6 8. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
7 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
8 those given by statute to other trial courts. This Court has jurisdiction over this action
9 pursuant to Health and Safety Code section 25249.7, which allows enforcement of
10 violations of Proposition 65 in any Court of competent jurisdiction.

11 9. This Court has jurisdiction over Defendants named herein because Defendants either
12 reside or are located in this State or are foreign corporations authorized to do business in
13 California, are registered with the California Secretary of State, or who do sufficient
14 business in California, have sufficient minimum contacts with California, or otherwise
15 intentionally avail themselves of the markets within California through their manufacture,
16 distribution, promotion, marketing, or sale of their products within California to render
17 the exercise of jurisdiction by the California courts permissible under traditional notions
18 of fair play and substantial justice.

19 10. Venue is proper in the County of Los Angeles because one or more of the instances of
20 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
21 because Defendants conducted, and continue to conduct, business in the County of Los
22 Angeles with respect to the consumer product that is the subject of this action.

23 **BACKGROUND AND PRELIMINARY FACTS**

24 11. In 1986, California voters approved an initiative to address growing concerns about
25 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to
26 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,
27 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
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1 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
2 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources
3 from contamination, to allow consumers to make informed choices about the products
4 they buy, and to enable persons to protect themselves from toxic chemicals as they see
5 fit.

6 12. Proposition 65 requires the Governor of California to publish a list of chemicals known to
7 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
8 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
9 chemicals and chemical families. Proposition 65 imposes warning requirements and
10 other controls that apply to Proposition 65-listed chemicals.

11 13. All businesses with ten (10) or more employees that operate or sell products in California
12 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited
13 from knowingly discharging Proposition 65-listed chemicals into sources of drinking
14 water (*Health & Safety Code* § 25249.5), and (2) required to provide "clear and
15 reasonable" warnings before exposing a person, knowingly and intentionally, to a
16 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

17 14. Proposition 65 provides that any person "violating or threatening to violate" the statute
18 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.
19 "Threaten to violate" means "to create a condition in which there is a substantial
20 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).

21 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
22 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

23 15. Plaintiff identified certain practices of manufacturers and distributors of Tongs with
24 plastic handles of exposing, knowingly and intentionally, persons in California to the
25 Proposition 65-listed chemicals of such products without first providing clear and
26 reasonable warnings of such to the exposed persons prior to the time of exposure.
27 Plaintiff later discerned that Defendants engaged in such practice.

1 16. On January 1, 1988, the Governor of California added Bis(2-ethylhexyl) phthalate
2 ("DEHP") to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit.
3 27, § 27001(b)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10,
4 twenty (20) months after addition of DEHP to the list of chemicals known to the State to
5 cause cancer, DEHP became fully subject to Proposition 65 warning requirements and
6 discharge prohibitions.

7 17. On October 24, 2003, the Governor of California added DEHP to the list of chemicals
8 known to the State to cause developmental and male reproductive toxicity (*Cal. Code*
9 *Regs.* tit. 27, § 27001(c)). DEHP is known to the State to cause developmental, female,
10 and male reproductive toxicity. Pursuant to Health and Safety Code sections 25249.9 and
11 25249.10, twenty (20) months after addition of DEHP to the list of chemicals known to
12 the State to cause reproductive toxicity, DEHP became fully subject to Proposition 65
13 warning requirements and discharge prohibitions.

14 **SATISFACTION OF PRIOR NOTICE**

15 18. On or about March 14, 2019, Plaintiff gave notice of alleged violations of Health and
16 Safety Code section 25249.6, concerning consumer products, subject to a private action
17 to GAJU, and to the California Attorney General, County District Attorneys, and City
18 Attorneys for each city containing a population of at least 750,000 people in whose
19 jurisdictions the violations allegedly occurred, concerning the Tongs with Plastic
20 Handles.

21 19. Before sending the notices of alleged violation, Plaintiff investigated the consumer
22 products involved, the likelihood that such products would cause users to suffer
23 significant exposures to DEHP, and the corporate structure of each of the Defendants.

24 20. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
25 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
26 Plaintiff who executed the certificate had consulted with at least one person with relevant
27 and appropriate expertise who reviewed data regarding the exposures to DEHP, the
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1 subject Proposition 65-listed chemical of this action. Based on that information, the
2 attorney for Plaintiff who executed the Certificate of Merit believed there was a
3 reasonable and meritorious case for this private action. The attorney for Plaintiff attached
4 to the Certificate of Merit served on the Attorney General the confidential factual
5 information sufficient to establish the basis of the Certificate of Merit.

6 21. Plaintiff's notices of alleged violations also included a Certificate of Service and a
7 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
8 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

9 22. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
10 gave notices of the alleged violations to GAJU, and the public prosecutors referenced in
11 Paragraph 18.

12 23. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
13 any applicable district attorney or city attorney has commenced and is diligently
14 prosecuting an action against the Defendants.

15 **FIRST CAUSE OF ACTION**

16 **(By CONSUMER ADVOCACY GROUP, INC. and against GAJU, and DOES 1-10**
17 **for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement**
18 **Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

19 **Kitchen Accessories**

20 24. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
21 reference paragraphs 1 through 23 of this complaint as though fully set forth herein.

22 25. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
23 distributor, promoter, or retailer of Tongs with plastic handles ("Tongs"), including but
24 not limited "LXD;" "MADEIN CHINA;" "14;" HQ S/S TONG (J0189);"
25 "893483703304".

26 26. Tongs contain DEHP.

27 27. Defendants knew or should have known that DEHP has been identified by the State of
28 California as a chemical known to cause cancer, developmental, and reproductive toxicity

1 and therefore was subject to Proposition 65 warning requirements. Defendants were also
2 informed of the presence of DEHP in Tongs within Plaintiff's notice of alleged violations
3 further discussed above at Paragraph 18.

4 28. Plaintiff's allegations regarding Tongs concerns "[c]onsumer products exposure[s],"
5 which "is an exposure that results from a person's acquisition, purchase, storage,
6 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
7 that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, § 25602(b).
8 Tongs are consumer products, and, as mentioned herein, exposures to lead took place as a
9 result of such normal and foreseeable consumption and use.

10 29. Plaintiff is informed, believes, and thereon alleges that between March 14, 2016 and the
11 present, each of the Defendants knowingly and intentionally exposed California
12 consumers and users of Tongs, which Defendants manufactured, distributed, or sold as
13 mentioned above, to DEHP, without first providing any type of clear and reasonable
14 warning of such to the exposed persons before the time of exposure. Defendants have
15 distributed and sold Tongs in California. Defendants know and intend that California
16 consumers will use and consume Tongs, thereby exposing them to DEHP. Defendants
17 thereby violated Proposition 65.

18 30. The principal routes of exposure are through dermal contact, and ingestion. Persons
19 sustain exposures by using, or handling the Tongs without wearing gloves or by touching
20 bare skin or mucous membranes with or without gloves after handling Tongs, as well as
21 through direct and indirect hand to mouth contact, hand to mucous membrane, trans-
22 dermal absorption, or breathing in particulate matter emanating from the Tongs during
23 use, as well as through environmental mediums that carry the DEHP once contained
24 within the Tongs.

25 31. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
26 Proposition 65 as to Tongs have been ongoing and continuous, as Defendants engaged
27 and continue to engage in conduct which violates Health and Safety Code section
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1 25249.6, including the manufacture, distribution, promotion, and sale of Tongs, so that a
2 separate and distinct violation of Proposition 65 occurred each and every time a person
3 was exposed to lead by Tongs as mentioned herein.

4 32. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
5 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
6 violations alleged herein will continue to occur into the future.

7 33. Based on the allegations herein, Defendants are liable for civil penalties of up to
8 \$2,500.00 per day per individual exposure to DEHP from Tongs, pursuant to Health and
9 Safety Code section 25249.7(b).

10 34. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
11 filing this Complaint.

12 **PRAYER FOR RELIEF**

13 Plaintiff demands against each of the Defendants as follows:

- 14 1. A permanent injunction mandating Proposition 65-compliant warnings;
15 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
16 3. Costs of suit;
17 4. Reasonable attorney fees and costs; and
18 5. Any further relief that the court may deem just and equitable.

19 Dated: Aug 5, 2019, 2019

YEROUSHALMI & YEROUSHALMI

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21 BY: 
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23 Reuben Yeroushalmi
24 Attorneys for Plaintiff,
25 Consumer Advocacy Group, Inc.
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